

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

B E T W E E N:

**ROYAL BANK OF CANADA**

Plaintiff

- and -

**SRI AYYAPPAN LTD., THIRUKUMAR PARARAJASINGAM and  
BHAHESWARY THIRUKUMAR**

Defendants

APPLICATION UNDER Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C 1985, c. B-3,  
and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

**FACTUM OF THE PLAINTIFF  
(Motion returnable January 14, 2021)**

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**Lawyers for the Plaintiff**

TO: **THE SERVICE LIST**

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**FACTUM OF THE PLAINTIFF**

**PART I – OVERVIEW**

1. This factum is filed by the Plaintiff, Royal Bank of Canada (the “**Bank**”), in connection with its motion for an order appointing msi Spergel Inc. (“**Spergel**”) as receiver (“**Receiver**”) over all of the assets, undertakings and property of Sri Ayyappan Ltd. (“**Sri**”) and Thirukumar Pararajasingam (“**Thirukumar**” and together with Sri, the “**Debtors**”) that were acquired for or used in relation to a business carried on by the Debtors, including the real property owned by Thirukumar known municipally as 8604 Hwy 25 North, Milton, Ontario (“**8604 North**”) and 8612 Hwy 25 North, Milton, Ontario (“**8612 North**” and together with 8604 North, the “**Milton Properties**”), pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”).

2. The Milton Properties are situated side-by-side. 8604 North is a detached residential house. 8612 North is an operating gas-station that includes a convenience store and a restaurant.

3. The Bank extended various secured loans to the Debtors, all of which became due and payable towards the end of 2020. The Bank formally demanded repayment in January 2021. On January 29, 2021, the parties entered into a Forbearance Agreement wherein the Debtors consented to a court-appointed receiver over their property, assets and undertakings if they failed to repay their respective indebtedness by April 29, 2021. Since that date, the Debtors have reneged on various commitments to repay their debts to the Bank despite being given ample time to do so. As of September 15, 2021, the amount owing by Sri to the Bank was \$82,661.13 and the amount owing by Thirukumar to the Bank was \$4,185,033.96, excluding costs and fees.

4. The Debtors' defence to this motion is that they have entered into alleged Agreements of Purchase and Sale for the Milton Properties ("**Sale Agreements**" and each a "**Sale Agreement**").

5. The Sale Agreement for 8604 North had a closing date of October 26, 2021 which has allegedly been extended to February 23, 2022 to permit the Debtors to obtain a severance of the Milton Properties. The purchaser is described as an individual "*In Trust (To Be Incorporated)*".

6. The Sale Agreement for 8612 North is subject to numerous conditions, none of which have been satisfied or waived. The alleged purchaser is 13382338 Canada Inc, the principal of which has outstanding judgments against him in favour of the Bank. Among other things:

- (a) the agreement contains a due diligence condition which has still not been satisfied or waived despite the agreement having allegedly been entered into on November 7, 2021;

- (b) if the aforesaid condition were to be waived, Thirukumar would be required to complete a new Phase 2 Environmental Site Assessment report satisfactory to the purchaser in its sole and absolute discretion. The Debtors have not requisitioned such a report;
- (c) the agreement is also conditional on the purchaser arranging financing satisfactory to the purchaser in its sole and absolute discretion;
- (d) the agreement is also conditional on approval of the purchaser “by all licensing bodies for the operation of the gas station and convenience store including, but not limited to, the Ontario Lottery and Gaming Corporation (OLG), Alcohol and Gaming Corporation (AGCO), Technical Standards and Safety Authority (TSSA), Ministry of Finance for Tobacco permit, and property and environmental insurance”. There is no evidence that this approval process has even been commenced;
- (e) the agreement is also conditional upon Thirukumar “receiving the waiver of the Fuel Supplier's First Right of Refusal prior to the completion of this transaction”. There is no evidence that this waiver has been requested, let alone granted;
- (f) the agreement is also conditional “upon the approval of the fuel supplier” and “the existing fuel supply contract being transferred and assigned to the Buyer”. There is no evidence that this approval and/or transfer have been requested, let alone granted;
- (g) the agreement is also conditional upon the “existing franchise agreements for Mr. Sub and Country Style being assigned to the Buyer”. There is no evidence that the franchisors have been contacted regarding these assignments, let alone that they have agreed to them.

7. The Debtors concede that consent to the severance of the Milton Properties will need to be obtained from the City of Milton before the properties can be sold separately. The Debtors also concede that apart from making inquiries with the City of Milton regarding the severance process, they have not taken any steps to commence that process.

8. As a result, the Bank has serious concerns regarding the legitimacy of the alleged transactions contemplated by the Sale Agreements and the likelihood that they will be completed. The Debtors have been given ample time to repay their debts to the Bank. The Bank respectfully submits that in the circumstances it is just and convenient for the Court to grant an order appointing Spergel as Receiver.

## PART II – FACTS

### Background

9. The Bank is a chartered bank carrying on business, *inter alia*, in the City of Toronto.<sup>1</sup>

10. Sri is a company incorporated pursuant to the laws of the Province of Ontario. Sri guaranteed the debts of Thirukumar to the Bank. The sole officer and director of Sri is Thirukumar.<sup>2</sup>

11. Thirukumar is an individual who resides in the City of Mississauga, in the Province of Ontario. Thirukumar personally guaranteed the debts of Sri to the Bank.<sup>3</sup>

12. Bhaheswary Thirukumar (“**Bhaheswary**”) is the wife of Thirukumar and resides in the City of Mississauga, in the Province of Ontario. Bhaheswary personally guaranteed the debts of the Debtors to the Bank.<sup>4</sup>

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<sup>1</sup> Affidavit of Robert Fick dated October 20, 2021 (“**Fick Affidavit**”), at para. 11

<sup>2</sup> *Ibid* at para. 12.

<sup>3</sup> *Ibid* at para. 13.

<sup>4</sup> *Ibid* at para. 14.

13. Thirukumar is the registered owner of 8604 North which consists of a single-story detached residential house. He also owns 8612 North which consists of a gas-bar and a convenience store / restaurant building.<sup>5</sup>

### **Loan to Sri**

14. Pursuant to a Credit Agreement dated August 24, 2018 (the “**Sri Credit Agreement**”), the Bank made available to Sri a revolving demand facility in the amount of \$75,000 (the “**Sri Revolving Demand Facility**”) and a credit card facility in the maximum amount of \$25,000 (the “**Sri Credit Card**”) and together with the Sri Revolving Demand Facility, the “**Sri Credit Facilities**”).<sup>6</sup>

15. In support of the Sri Credit Facilities, the Bank was granted, among other things, (a) a General Security Agreement in all of Sri’s present and after acquired personal property (the “**Sri GSA**”) and (b) a Guarantee and Postponement of Claim by Thirukumar and Bhaheswary (the “**Joint Guarantee**”).<sup>7</sup>

16. On August 24, 2018, the Bank registered a financing statement under the Ontario *Personal Property Security Act* (“**PPSA**”) against Sri.<sup>8</sup>

17. The Sri Credit Agreement provides that failure by Sri to pay any principal, interest or other amount when due is an event of default. If an event of default occurs, the Bank is entitled to, in its sole discretion, cancel any of the Sri Credit Facilities, demand immediate repayment together with outstanding interest and to realize on all or any portion of the security.<sup>9</sup>

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<sup>5</sup> Fick Affidavit at para. 15.

<sup>6</sup> *Ibid* at para. 16.

<sup>7</sup> *Ibid* at para. 17.

<sup>8</sup> *Ibid* at para. 18.

<sup>9</sup> *Ibid* at para. 19.

18. The Sri GSA provides that nonpayment when due, whether by acceleration or otherwise, of any principal or interest forming part of Sri's indebtedness is an event of default and allows for the appointment of a receiver upon default.<sup>10</sup>

### **Loan to Thirukumar**

19. Pursuant to a Credit Agreement dated August 24, 2018 (the "**Thirukumar Credit Agreement**"), the Bank made available to Thirukumar a fixed rate term loan in the amount of \$4,500,000 (the "**Thirukumar Term Loan**") and a credit card facility in the maximum amount of \$5,000 (the "**Thirukumar Credit Card**" and together with the Thirukumar Term Loan, the "**Thirukumar Credit Facilities**").<sup>11</sup>

20. In support of the Thirukumar Credit Facilities, the Bank was granted, among other things, (a) a General Security Agreement in all of Thirukumar's present and after acquired personal property (the "**Thirukumar GSA**"), (b) a mortgage in the principal amount of \$5,343,800 over the Milton Properties (the "**Mortgage**"), (c) a Guarantee and Postponement of Claim by Bhaheswary (the "**Bhaheswary Guarantee**"), and (d) a Guarantee and Postponement of Claim by Sri (the "**Sri Guarantee**").<sup>12</sup>

21. On August 24, 2018, the Bank registered a financing statement under the Ontario PPSA against Thirukumar.<sup>13</sup>

22. The Thirukumar Credit Agreement provides that failure by Thirukumar to pay any principal, interest or other amount when due is an event of default. If an event of default occurs, the Bank is

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<sup>10</sup> Fick Affidavit at para. 20.

<sup>11</sup> *Ibid* at para. 21.

<sup>12</sup> *Ibid* at para. 22.

<sup>13</sup> *Ibid* at para. 23.

entitled to, in its sole discretion, cancel any of the Thirukumar Credit Facilities, demand immediate repayment together with outstanding interest and to realize on all or any portion of the security.<sup>14</sup>

23. The Mortgage provides that it is an event of default when the chargor fails to make payment of any instalment of principal, interest or taxes secured by the charge. In the event of default, the Mortgage provides for the appointment of a receiver.<sup>15</sup>

24. The Thirukumar GSA provides that nonpayment when due, whether by acceleration or otherwise, of any principal or interest forming part of Thirukumar's indebtedness is an event of default and allows for the appointment of a receiver upon default.<sup>16</sup>

## **Default**

25. By letter dated November 12, 2020, counsel for the Bank notified the Debtors that the Thirukumar Term Loan had matured and requested payment of all amounts owing under the Thirukumar Credit Facilities and Sri Credit Facilities by no later than January 11, 2021.<sup>17</sup>

26. The Debtors failed to repay the outstanding amounts owing by January 11, 2021.<sup>18</sup>

27. By letters dated January 18, 2021, the Bank made formal written demands for payment on the Debtors and served NITES (the "**January Demand Letters**").<sup>19</sup>

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<sup>14</sup> Fick Affidavit at para. 24.

<sup>15</sup> *Ibid* at para. 25.

<sup>16</sup> *Ibid* at para. 26.

<sup>17</sup> *Ibid* at para. 27.

<sup>18</sup> *Ibid* at para. 28.

<sup>19</sup> *Ibid* at para. 29.

## Forbearance

28. On January 29, 2021, the parties entered into the Forbearance Agreement, wherein, among other things:

- (a) Sri, Thirukumar and Bhaaheswary acknowledged the validity of the January Demand Letters and the amounts owing as set out therein;
- (b) the Bank agreed to forbear from enforcing on its security until the earlier of (i) ninety (90) days after the execution of the Forbearance Agreement, and (ii) the occurrence of an Event of Default (as defined therein) (the “**Forbearance Termination Date**”); and
- (c) the Debtors agreed that if they failed to repay their respective indebtedness on or before the Forbearance Termination Date, they consented to a court appointed receiver over the property, assets and undertakings of the Debtors.<sup>20</sup>

29. Commencing before the expiry of the Forbearance Termination Date, the Debtors asked for several additional indulgences to repay their obligations and reneged on numerous commitments with respect to repayment and provision of adequate financial disclosure.<sup>21</sup>

30. On or about April 19, 2021, Thirukumar indicated that the Debtors were unable to repay their debts to the Bank for numerous reasons. He also indicated that the Debtors had been unable to obtain financing from another financial institution or from a private lender.<sup>22</sup>

31. The Forbearance Agreement expired on April 29, 2021.<sup>23</sup>

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<sup>20</sup> Fick Affidavit at para. 30.

<sup>21</sup> Reply Affidavit of Robert Fick sworn December 16, 2021 (“**Reply Affidavit**”) at para. 4.

<sup>22</sup> *Ibid* at para. 5.

<sup>23</sup> Fick Affidavit at para. 31.

32. Following the expiry of the Forbearance Agreement, the Debtors indicated that they would be repaying their debts to the Bank using loans obtained from a third party, or alternatively from proceeds of sale of the Milton Properties. No such repayments occurred.<sup>24</sup>

33. The Bank requested additional financial information from the Debtors to which the Bank is entitled and which the Debtors agreed to provide under the Forbearance Agreement and loan documents. The Debtors took several months to provide basic information and have still not provided proper updated financial statements.<sup>25</sup>

34. Beginning in August 2022, the Debtors provided conflicting information regarding the potential sale of the Milton Properties and the possibility of financing being obtained in order to repay the Bank.<sup>26</sup>

35. On September 15, 2021, the Bank made another formal written demand for payment on the Debtors.<sup>27</sup>

## **The Sale Agreements**

### **(i) 8604 North**

36. The Sale Agreement for 8604 North had a closing date of October 26, 2021 which has allegedly been extended to February 23, 2022 to permit the Debtors to obtain a severance of the Milton Properties. The purchaser is described as an individual “*In Trust (To Be Incorporated)*”.<sup>28</sup>

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<sup>24</sup> Fick Affidavit at para. 32.

<sup>25</sup> Reply Affidavit at para. 6.

<sup>26</sup> *Ibid* at para. 7.

<sup>27</sup> Fick Affidavit at para. 33.

<sup>28</sup> Agreement of Purchase and Sale for 8604 North Property, Exhibit B to the Affidavit of Thirukumar Pararajasingam sworn December 9, 2021 (“**Thirukumar Affidavit**”).

37. The Debtors concede that consent to the severance of the Milton Properties will need to be obtained from the City of Milton before the properties can be sold separately. Thirukumar and the Debtors' real estate counsel, Herman Tse, also concede that apart from making inquiries with the City of Milton regarding the severance process, they have not taken any steps to commence that process.<sup>29</sup>

**(ii) 8612 North**

38. The purchaser under the Sale Agreement for 8612 North is 13382338 Canada Inc. ("**1338**"). Farooq Ahmed and Safia Farooq are the directors of 1338. The Bank has a judgment against each of these individuals and outstanding writs of seizure and sale which were filed in October and November 2021.<sup>30</sup>

39. The Debtors have been asked to produce all written communications with 1338 and/or its lawyers and/or agents in connection with this Sale Agreement. Their evidence is that no such communications exist and that, to their knowledge, 1338 has not engaged a lawyer in connection with this Sale Agreement.<sup>31</sup>

40. The Sale Agreement for 8612 North is subject to numerous conditions, none of which have been satisfied or waived. Among other things:

- (a) the agreement contains a due diligence condition which has still not been satisfied or waived despite the agreement having allegedly been entered into on November 7, 2021;<sup>32</sup>

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<sup>29</sup> Para. 6 of Thirukumar Affidavit; Para. 51-53 of the Transcript of the Examination in Aid of Pending Motion of Herman Tse dated December 28, 2021 ("**Tse Transcript**").

<sup>30</sup> Reply Affidavit at para. 12.

<sup>31</sup> Para. 12-16 of Tse Transcript; Para.16-17 and 28-44 of the Transcript from the Cross-Examination of Thirukumar Pararajasingam dated December 28, 2021 ("**Thirukumar Transcript**").

<sup>32</sup> Exhibit C to the Thirukumar Affidavit.

- (b) if the aforesaid condition were to be waived, Thirukumar would be required to complete a new Phase 2 Environmental Site Assessment report satisfactory to the purchaser in its sole and absolute discretion.<sup>33</sup> The Debtors have not adduced any evidence that they have requisitioned such a report;
- (c) the agreement is also conditional on the purchaser arranging financing satisfactory to the purchaser in its sole and absolute discretion;<sup>34</sup>
- (d) the agreement is also conditional on approval of the purchaser “by all licensing bodies for the operation of the gas station and convenience store including, but not limited to, the Ontario Lottery and Gaming Corporation (OLG), Alcohol and Gaming Corporation (AGCO), Technical Standards and Safety Authority (TSSA), Ministry of Finance for Tobacco permit, and property and environmental insurance”.<sup>35</sup> There is no evidence that this approval process has even been commenced;
- (e) the agreement is also conditional upon Thirukumar “receiving the waiver of the Fuel Supplier's First Right of Refusal prior to the completion of this transaction”.<sup>36</sup> There is no evidence that this waiver has been requested, let alone granted;
- (f) the agreement is also conditional “upon the approval of the fuel supplier” and “the existing fuel supply contract being transferred and assigned to the Buyer”.<sup>37</sup> There is no evidence that this approval and/or transfer have been requested, let alone granted;
- and

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<sup>33</sup> Exhibit C to the Thirukumar Affidavit.

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

- (g) the agreement is also conditional upon the existing franchise agreements for Mr. Sub and Country Style being assigned to the Buyer”.<sup>38</sup> There is no evidence that the franchisors have been contacted regarding these assignments, let alone that they have agreed to them.

**(iii) Severance of the Milton Properties**

41. The Debtors concede that consent to the severance of the Milton Properties will need to be obtained from the City of Milton before the properties can be sold separately.<sup>39</sup>

42. During cross-examination, Mr. Tse produced an email sent to the City of Milton on November 22, 2021 requesting guidance on the procedure for obtaining consent to severance of the Milton Properties.<sup>40</sup>

43. Mr. Tse also produced an email sent to him on November 24, 2021 from the representative of the City of Milton indicating that the City typically has a pre-consultation meeting to review the feasibility of a severance proposal, and asking Mr. Tse to provide certain information on a preliminary basis, following which City staff would “provide comments and next steps with respect to the application process”.<sup>41</sup> Mr. Tse confirmed that he has not yet responded to that request.<sup>42</sup>

**PART III – ISSUES**

44. The sole issue on this motion is whether it is just and convenient for the Court to appoint a receiver over the assets, properties and undertakings of the Debtors.

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<sup>38</sup> Exhibit C to the Thirukumar Affidavit.

<sup>39</sup> Para. 6 of Thirukumar Affidavit; Para. 51-53 of the Tse Transcript.

<sup>40</sup> Exhibit 4 to the Tse Transcript.

<sup>41</sup> *Ibid.*

<sup>42</sup> Para. 52-53 of Tse Transcript.

## PART IV – LAW AND ARGUMENT

### Test for the Appointment of a Receiver

45. Section 243 of the *BIA* provides as follows:

#### Court may appoint receiver

- 243.** (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:
- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
  - (b) exercise any control that the court considers advisable over that property and over the insolvent person’s or bankrupt’s business; or
  - (c) take any other action that the court considers advisable.<sup>43</sup>

46. Section 101 of the *CJA* provides as follows:

**101** (1) In the Superior Court of Justice ... a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.<sup>44</sup>

47. In determining whether it is just or convenient to appoint a receiver under both the *BIA* and the *CJA*, a court must have regard to all of the circumstances of the case, particularly the nature of the property and the rights and interests of all parties in relation to the property.<sup>45</sup>

48. Where a debtor has expressly agreed to the appointment of a receiver in the event of default, the court should not ordinarily interfere with the contract between the parties.<sup>46</sup>

<sup>43</sup> S. 243(1), *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as amended (the “**BIA**”).

<sup>44</sup> S. 101(1), *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended (the “**CJA**”).

<sup>45</sup> *Bank of Montreal v. Carnival National Leasing Ltd.*, 2011 CarswellOnt 896 (S.C.J.) [“**Carnival**”] at para. 24 citing *Bank of Nova Scotia v. Freure Village on Clair Creek* (1996) 40 C.B.R. (3d) 274 (Ont. Gen. Div.) (“**Freure Village**”) at para. 10.

<sup>46</sup> *United Savings Credit Union v. F & R Brokers Inc.*, 2003 BCSC 640 (B.C.S.C.), at para. 16.

49. It is not essential that the moving party establish that it will suffer irreparable harm if a receiver is not appointed.<sup>47</sup> It is likewise not essential that the moving party establish that the situation is urgent before a receiver will be appointed, only whether it is necessary to protect the interests of the secured creditor.<sup>48</sup>

50. It is also not necessary that an applicant demonstrate that other remedies are defective before being entitled to a court-appointed receiver.<sup>49</sup>

### **It is Just and Convenient to Appoint a Receiver**

51. As described above, all amounts owed by the Debtors to the Bank became due and payable towards the end of 2020. The Bank formally demanded repayment in January 2021, at which time the parties entered into a Forbearance Agreement wherein the Debtors consented to a court-appointed receiver over their property, assets and undertakings if they failed to repay their respective indebtedness by April 29, 2021. Since that date, the Debtors have reneged on various commitments to repay their debts to the Bank despite being given ample time to do so.

52. The Sri Credit Agreement, Thirukumar Credit Agreement, Sri GSA, Thirukumar GSA and the Mortgage expressly provide for the appointment of a receiver.

53. There are serious concerns regarding the legitimacy of the alleged transactions contemplated by the Sale Agreements and the likelihood that they will be completed.

54. The Debtors have had about one year since they entered into the Forbearance Agreement to commence the process for severance of the Milton Properties. The Debtors have not made good faith

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<sup>47</sup> *Carnival* at para. 28 citing *Swiss Bank Corp. (Canada) v. Odyssey Industries Inc.* (1995) 30 C.B.R. (3d) 49 (Ont. Gen. Div.) at para. 28.

<sup>48</sup> *Carnival* at para. 29 citing *Bank of Nova Scotia v. D. G. Jewelry Inc.*, 2002 CarswellOnt 3443 (S.C.J.) [**D.J. Jewelry**] at paras. 1 and 3.

<sup>49</sup> *D.J. Jewelry* at para. 3.

efforts to do so. There is no reason to believe that the Debtors will be able to obtain the severance before the alleged closing dates under the Sale Agreements.

55. The Bank therefore respectfully submits that it just and convenient that the Receiver be appointed to take possession, preserve, market and sell the property and assets that were acquired for or used in relation to a business carried on by the Debtors, including the Milton Properties, to maximize value for the Bank and any of the Debtors' other stakeholders.

#### **PART V – RELIEF SOUGHT**

56. The Bank respectfully submits that the Court grant an order appointing Spergel as receiver over the Property of the Debtor.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 5<sup>th</sup> day of January, 2022.

A handwritten signature in black ink, consisting of stylized initials 'CB' followed by a horizontal line extending to the right.

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**CHAITONS LLP**

*Lawyers for the Royal Bank of Canada*

## SCHEDULE "A"

### LIST OF AUTHORITIES

1. [\*Bank of Montreal v. Carnival National Leasing Ltd.\*, 2011 ONSC 1007](#)
2. [\*Bank of Nova Scotia v. Freure Village of Clair Creek\*, 1996 CanLII 8258 \(S.C.J.\)](#)
3. [\*United Savings Credit Union v. F & R Brokers Inc.\*, 2003 BCSC 640 \(B.C.S.C.\)](#)
4. [\*Swiss Bank Corp. \(Canada\) v. Odyssey Industries Inc.\*, 1995 CarswellOnt 39 \(Ont. Gen. Div.\)](#)
5. [\*Bank of Nova Scotia v. D. G. Jewelry Inc.\*, 2002 CanLII 12477 \(ON S.C.J.\)](#)

## SCHEDULE "B"

### TEXT OF STATUTES, REGULATIONS & BY - LAWS

#### ***Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended***

##### **Court may appoint receiver**

243. (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

(b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or

(c) take any other action that the court considers advisable.

##### **Advance notice**

244 (1) A secured creditor who intends to enforce a security on all or substantially all of

(a) the inventory,

(b) the accounts receivable, or

(c) the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

##### **Period of notice**

(2) Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required until the expiry of ten days after sending that notice, unless the insolvent person consents to an earlier enforcement of the security.

#### ***Courts of Justice Act, R.S.O. 1990, c. 43, as amended***

##### **Injunctions and receivers**

101(1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

##### **Terms**

(2) An order under subsection (1) may include such terms as are considered just.

ROYAL BANK OF CANADA

-and-

SRI AYYAPPAN LTD., ET AL

Plaintiff

Defendants

Court File No. CV-21-00670409-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT  
TORONTO

**FACTUM**

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